U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 99 069 50148 Office: CALIFORNIA SERVICE CENTER Date: 3 – APR 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The visa petition and initial extension of stay were approved by the Director, California Service Center. The petition was subsequently returned to the Service by the U.S. Consulate at Guangzhou for review which resulted in the revocation of the petition. However, a subsequent review revealed that the decision to revoke was incomplete as it did not address all the evidence of record. The director ultimately reopened the case *sua sponte* and issued a new notice of revocation. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed, and the approval of the petition will be revoked.

The petitioner is described as an international trading company. It seeks to employ the beneficiary temporarily in the United States as its purchasing manager. In the most recent decision the director determined that the petitioning entity had not established the existence of a qualifying relationship between it and a foreign entity. The director also concluded that the petitioner failed to establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal from the most recent decision, counsel for the petitioner asserts that the director ignored evidence which purportedly establishes the existence of a qualifying relationship between the foreign and U.S. entities. Counsel also stated that the Service had not given the petitioner any notice prior to determining that the beneficiary failed to establish that she performed duties that were of a primarily managerial or executive nature.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity,

including a detailed description of the services to be performed.

The petitioning entity is a corporation which was incorporated in 1992 in the state of California. The petitioner states that it is wholly owned by a foreign parent organization, located in Shenzen, China. The subsidiary declares three employees and approximately $1,066,941 in gross revenues. The petitioner seeks to employ the beneficiary as "purchasing manager" at a salary of $500 per week.

The key issue in this proceeding is whether a qualifying relationship exists between the petitioning corporation and the claimed parent company.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
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> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

> *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. 214.2(l)(1)(ii)(J) states:

> *Branch* means an operation division or office of the same organization housed in a different location.

8 C.F.R. 214.2(l)(1)(ii)(K) states:

> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50

> percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

> *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
>
> (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In the instant case, the director issued a notice of intent to revoke requesting that the petitioner submit evidence of ownership and control of the U.S. entity. The director specified that the evidence submitted should consist of the following:

> 1) Notice of Transaction Pursuant to California Corporations Code Section 25102(f);
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> 2) Stock transfer ledger and stock certificates;
>
> 3) Wire transfers, canceled checks, etc. with verifiable originator(s) to show that the foreign entity has in fact paid for the ownership and control of the U.S. entity; and
>
> 4) Original business bank statements in the United States to show the amounts paid for the stock ownership have been deposited in the business bank account of the U.S. entity.

The petitioner submitted the evidence listed in Nos. 1 and 2 above. While the petitioner also submitted a number of bank statements confirming the transfer of funds to the U.S. entity, there is no clear evidence that the originator of those funds was Tiangang Automatic Engineering Co., LTD, the claimed foreign parent organization and the purported owner of the U.S. entity. Instead, the originator of the transferred funds referenced by the petitioner is a company called Tin Kwong Int'l Ent Co. LTD. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case, counsel merely submitted a supplemental statement

claiming that Tin Kwong is the Cantonese translation for Tiangang, thereby implying that the two are one and the same. However, no documentary evidence has been submitted to support that assertion.

Furthermore, the petitioner entirely failed to submit the bank statements described in No. 4 above. Instead, counsel explained that the petitioner no longer had such records in its possession as its general practice is to discard of bank records that are more than five years old. However, whether or not the requested bank records are within the petitioner's immediate possession is irrelevant. The petitioner was free to go beyond its own in-house records in pursuit of the requested documentation. The record does not indicate that any further efforts to obtain that documentation have been made. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the most recent motion to reopen, the director ultimately reaffirmed the prior revocation and concluded, in part, that the petitioner did not submit sufficient evidence to show that the parent company in Shenzhen China has in fact paid for the stock ownership which would establish a qualifying relationship between the foreign company and the U.S. petitioner.

On appeal from that decision, counsel reasserts the claim that petitioner is the wholly-owned subsidiary of the Chinese parent corporation as the result of the latter entity's purchase of 100% of the petitioner's issued stock. Although counsel accuses the Service of misreading and ignoring evidence in the petitioner's record, the fact remains that there is no direct evidence in the record to support the petitioner's claim that the foreign entity supplied the capital to establish the corporation. Contrary to counsel's implication, the wire transfers that originated from Tin Kwong International have been considered. However, as noted by the director, there is no record of any fund transfers originating from Tianxing Automatic Engineering of Shenzhen China. All of the documented fund transfers originated from Tin Kwong Intl Enterprises of Hong Kong and no evidence has been submitted to support the assertion that Tin Kwong Intl and Tianxing, the claimed parent company, are one and the same.

Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G).

The director's decision reaffirming the prior revocation was also based on the determination that the record did not contain sufficient evidence to establish that the beneficiary has been or will primarily performing duties of a managerial or executive

capacity. However, as also noted by the director, this issue is beyond the scope of the Service's notice of intent to revoke.

Regarding a revocation on notice, 8 C.F.R. 214.2(l)(9)(iii) states:

> (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:
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> > (1) One or more entities are no longer qualifying organizations;
> >
> > * * * *
>
> (B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

Thus, pursuant to the above regulation, the issue of whether the beneficiary established that she has been and will be performing functions of a primarily managerial or executive capacity will not be addressed in this decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.